

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SHELLY AUSTIN,

Plaintiff,

v.

TURNER CONSTRUCTION COMPANY,

Defendant.

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Civil Action No. **3:10-CV-1358-L**


MEMORANDUM OPINION AND ORDER

Before the court are the parties' Joint Motion to Stay Proceedings and Compel Arbitration, filed August 31, 2010; and Agreed Motion to Amend/Correct Joint Motion to Stay Proceedings and Compel Arbitration, filed September 1, 2010. The two motions are identical, except the second motion includes exhibits and should have been titled "Amended Joint Motion to Stay Proceedings and Compel Arbitration." The first motion is therefore moot, and the court **denies** the parties' Joint Motion to Stay Proceedings and Compel Arbitration, filed August 31, 2010.

With respect to the Amended Joint Motion to Stay Proceedings and Compel Arbitration, the court **grants in part** and **denies in part** the motion. Specifically, the court **denies** the parties' Amended Joint Motion to Stay Proceedings and Compel Arbitration to the extent that the parties request that the action be stayed, and **grants** it to the extent that the parties request that all claims be submitted to arbitration for resolution. The parties have expressly agreed that all of Plaintiff Shelly Austin's ("Plaintiff" or "Austin") claims are subject to arbitration under Turner's Dispute Resolution Policy and Procedures (the "Policy"). After a review of the applicable provisions of the Policy, the court is convinced that all of Austin's claims in this action are arbitrable and must be submitted to arbitration for resolution. Under such circumstances, the

district court may dismiss the action with prejudice rather than stay it. *Alford v. Dean Witter Reynolds, Inc.*, 975 F.2d 1161, 1164 (5th Cir. 1992); *Fedmet Corp. v. M/V Buyalyk*, 194 F.3d 674, 676 (5th Cir. 1999). Accordingly, the court **dismisses with prejudice** this action and all claims therein asserted. Further the parties **shall submit** Plaintiff's claims in this action to arbitration in accordance with the Policy. Finally, as this action has been dismissed and will be submitted to arbitration, the court **vacates** its Order Requiring Attorney Conference and Status Report.

It is so ordered this 3rd day of September, 2010.


Sam A. Lindsay
United States District Judge